

## **ADVISORY OPINION NO. 98-10**

**Issued on April 2, 1998 by the**

### **WEST VIRGINIA ETHICS COMMISSION**

#### **PUBLIC SERVANT SEEKING OPINION**

A City Council Member and the Director of City Loan Program

#### **OPINION SOUGHT**

Is it a violation of the Ethics Act if a City Council Member gains a commission from the sale of property financed, in part, by a City Loan Program?

#### **FACTS RELIED UPON BY THE COMMISSION**

The city council member is also a full-time real estate agent. He is the realtor for a Bank which is attempting to sell a foreclosed home. Pursuant to his agreement with the Bank, he would receive a 7% commission from the gross selling price of the home. A purchaser was interested in the home and the Bank was prepared to provide 100% of the financing to the purchaser.

However, a non-profit organization directed the purchaser to a Loan Program run by the City. That Loan Program is entirely funded by the Federal Government. If a borrower qualifies under the Program it provides a portion of the purchase price as a forgivable deferred loan. The City Council must vote on each expenditure from this Loan Program. The purchaser has qualified for the Program and now wants to finance part of the purchase price with a forgivable deferred loan.

The council member had no knowledge of, or participation in, the purchaser's learning of the Loan Program and subsequent decision to apply for a loan under it. The Bank has agreed to pay any commission to the requester from a separate account so that no part of the commission would come from the City's Loan Program funds.

The council member does not intend to vote on the decision to expend Loan Program funds for this purchase. He inquires whether the purchase would violate the Ethics Act if he receives a commission as outlined above. Alternatively, the Loan Program Director requests an exemption from the applicable provision of the Ethics Act on the ground that it would create an undue hardship and result in substantial interference with the operation of the Program.

#### **PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION**

West Virginia Code 6B-2-5(d)(1) states in pertinent part that...no elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a

contract which such official or employee may have direct authority to enter into, or over which he or she may have control

### **ADVISORY OPINION**

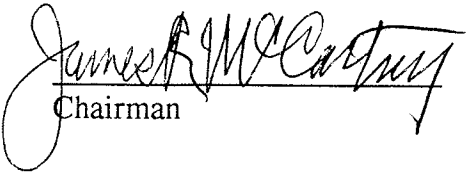
The Ethics Act prohibits public servants from being a party to, or having an interest in the profits or benefits of, a public contract over which they have direct authority or control by virtue of their position.

In this case, the city council member has authority and control over the decision to make a forgivable deferred loan to a home purchaser. However, under the facts presented, he has a contract with the Bank for payment of a commission from the Bank's gross proceeds from the sale.

The Commission finds that the City Council Member does not have a financial interest in the profits or benefits of the proposed contract between the Loan Program and the purchaser. Therefore it would not violate the provisions of WV Code 6B-2-5(d).

This decision is expressly based upon, and limited to, the unique facts of this case, i.e., the Bank was prepared to finance all of the purchase price, neither the Bank nor the requester participated in the purchaser's subsequent decision to involve the Loan Program in the financing, and the requester shall not participate in the vote to approve the Loan Program expenditure. No other person should rely upon this opinion without first consulting the Ethics Commission for guidance.

Since the Commission has ruled that there is no violation of WV Code 6B-2-5(d), the request for an exemption under WV Code 6B-2-5(d)(3) is moot.

  
Chairman